

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

LARRY EUGENE BALCEROWICZ,

Plaintiff,

v.

KIM OGG,

Defendant.

§
§
§
§
§
§
§
§
§

CIVIL ACTION No. H-20-2647

MEMORANDUM OPINION AND ORDER

Plaintiff, a pretrial detainee in custody of the Harris County Sheriff's Office, filed a *pro se* section 1983 lawsuit against Harris County District Attorney Kim Ogg. He alleges that, in July 2018, Ogg pursued criminal prosecution against him in violation of his constitutional rights. He seeks monetary compensation.

Because plaintiff is a pretrial detainee, his lawsuit is subject to dismissal upon screening pursuant to 28 U.S.C. §§ 1915 and 1915A. Both sections 1915(e)(2)(B) and 1915A(b) provide for *sua sponte* dismissal of the complaint, or any portion thereof, if the Court finds that it is frivolous or malicious, if it fails to state a claim upon which relief may be granted, or if it seeks monetary relief against a defendant who is immune from such relief.

Plaintiff's claims against defendant Ogg are barred by prosecutorial immunity. *See Imbler v. Pachtman*, 424 U.S. 409, 431 (1976); *Beck v. Tex. State Bd. of Dental Examiners*, 204 F.3d 629, 637 (5th Cir. 2000). This immunity extends to all actions which occur in the course of the prosecutor's role as an advocate for the State. *Cousin v. Small*, 325 F.3d 627,


632 (5th Cir. 2003). Prosecutorial immunity applies to a prosecutor's actions in initiating a prosecution and in handling the case through the judicial process. Plaintiff's claims for monetary damages against Ogg may not proceed.

This lawsuit is DISMISSED WITH PREJUDICE for failure to state a viable claim for relief under section 1983 premised on prosecutorial immunity. All pending motions are DISMISSED AS MOOT.

This dismissal constitutes a "strike" for purposes of section 1915(g).

The Clerk is to provide a copy of this order to plaintiff and to the United States District Court for the Southern District of Texas, Houston Division, Attention: Three-Strikes List Manager, at the following email: Three_Strikes@txs.uscourts.gov.

Signed at Houston, Texas on July 29, 2020.



Gray H. Miller
Senior United States District Judge